IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Bail Appl..No. 6297 of 2007()

C.R.NO.109/2007 OF PATHANAPURAM EXCISE RANGE

: PETITIONER/2ND ACCUSED:

SURENDRAN, S/O. KUMARAN,
AGED 42, SUBIN BHAVAN, THAZHATHUVADAKU DESOM,
PATTAZHI, VADAKKEKARA VILLAGE, PATHANAPURAM TALUK.

BY ADV. SMT.VIVEEJA RAVEENDRAN

RESPONDENTS: COMPLAINANTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. EXCISE INSPECTOR,
PATHANAPURAM EXCISE RANGE, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6297 of 2007

Dated this the 17th day of October, 2007

ORDER

Application for anticipatory bail. Petitioner is the 2nd accused. Altogether there are 3 accused persons. The excise party allegedly seized 32 litres of spirit from the house of the 1st accused on 17.09.07. Accused No.1 was arrested. A sealing machine for packing the arrack made out of spirit was also available in the premises of the 1st accused. The 1st accused was interrogated. He allegedly made a confession that he supplies arrack, after packing, to the petitioner-the 2nd accused for distribution. The 3rd accused is allegedly the one who supplies spirit to the 1st accused. The 1st accused led the investigators to the house of the petitioner herein and there 400 packets of arrack were seized. The petitioner was not available in that house. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The house in question does not belong to him at all. The 1st accused has made totally false allegations against the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications clearly point to the culpability of the petitioner. The confession of the 1st accused as also the recovery effected do all confirm such

complicity. There is no merit in the contention that the house does not belong to the petitioner. The information collected from the neighbours which finds place in the Seizure Mahazar and the Occurrence Report clearly point to the complicity of the petitioner, it is submitted.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I shall not embark on a detailed discussion about the acceptability of the allegations or the credibility of the data collected. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-